Editor's note: Appealed -- vacated and remanded, Civ.No. A87-075 (D.Alaska Feb. 24, 1990); Dist Ct. reversed, No. 90-35573 (9th Cir. May 15, 1991); 933 F.2d 1013 (unpublished); cert denied, No. 91-277, (Nov. 12, 1991), 112 S.Ct. 416

ADD-VENTURES, LTD.

IBLA 85-694 Decided December 19, 1986

Appeal from a decision of the Anchorage District Office, Bureau of Land Management, deeming mining claims abandoned, declaring mining claim recordations void, and rejecting mineral survey applications. AA-39005 through AA-39143.

Affirmed as modified.

1. Administrative Authority: Generally--Bureau of Land Management--Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Federal Land Policy and Management Act of 1976: Rules and Regulations--Mining Claims: Determination of Validity

   Neither 43 U.S.C. § 1744 (1982) nor the regulations at 43 CFR 3833 require a mineral locator to submit proof of chain of title to BLM. The regulation at 43 CFR 3833.4 provides that failure to file information after notice from BLM as to a deficiency may lead to a determination that a claim is void, but application of the rule is explicitly limited to the information requirements of the regulatory provisions listed in the subsection. The regulatory procedure for dealing with curable defects applies only when information sought by BLM is required by regulation. It does not apply to other information BLM might believe would be useful to its administration of mining claim records so as to permit invalidation of a claim for reasons not enumerated by statute or regulation.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim

   Although 43 U.S.C. § 1744(a) does not prescribe the form a notice of intention to hold a mining claim must take, not every document sent to BLM from which intent might be inferred is sufficient. Rather, whatever the

form of the instrument, it must be filed with BLM as a notice of intent. It must indicate that the claim owner continues to have an interest in the claim. It must also be a copy of the document which was or will be recorded with the county or local recorder's office. The instrument must also include a description of the location of the mining claim sufficient to locate the claimed lands on the ground, the BLM assigned claim number, or the name of the claim.

3. Administrative Procedure: Administrative Review--Rules of Practice: Appeals: Burden of Proof--Rules of Practice: Appeals: Statement of Reasons

An appellant who does not with some particularity show adequate reason for appeal and, as appropriate, support the allegation with argument or evidence showing error cannot be afforded favorable consideration. Conclusory allegations of error, standing alone, do not suffice.

APPEARANCES: A. Lee Petersen, Esq., Anchorage, Alaska, for appellant Add-Ventures, Ltd.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Add-Ventures, Ltd. has appealed a decision of the Anchorage District Office, Bureau of Land Management (BLM), dated May 14, 1985, deeming 139 lode and placer mining claims abandoned, declaring their recordations void, and rejecting mineral survey applications for the claims. 1/ As the basis

1/ The claims are the Discovery on Willow Creek, AA-39005; No. 1 Above Discovery, AA-39006; SURPRISE CLAIM, AA-39007; Gulch placer, AA-39008; Alder No. 1, AA-39009; Willow Claim, AA-39010; Alder # 2, AA-39011; Discovery Placer, AA-39012; Number one Above Discovery, AA-39013; Number Two above discovery, AA-39014; "Bread Line", AA-39015; no. 3, above discovery, AA-39016; Number four Above Discovery, AA-39017; Number five above Discovery, AA-39018; the nos. 3, 4, and 5 on little willow, AA-39019 through AA-39021; Fraction Placer, AA-39022; The N. 1 on Lucky Placer, AA-39023; No. 3, on Willow Creek, AA-39024; Nos. 1 and 2 on Willow Creek, AA-39025 and AA-39026; GOPHER GULCH, AA-39027; DISCOVERY ON RUBY GULCH, AA-39028; DISCOVERY on Snow Shoe Gulch, AA-39029; No 1 Above DISCOVERY, AA-39030; DISCOVERY on Rocky Gulch, AA-39031; No. 1 Above Discovery ON ROCKY GULCH, AA-39032; NUMBER ONE on Falls Gulch, AA-39033; NO. 1 Above discovery on Gopher Gulch, AA-39034; NO. 2 ABOVE DISCOVERY, AA-39033; DRY CREEK GULCH, AA-39036; NO. 6, NUMBER 61X, AA-39037; NUMBER 7, No. 7, AA-39038; NO. 8, NUMBER 8, AA-39039; NO. 9, NUMBER NINE, AA-39040; NO.1 FRACTION, AA-39041; KORTER BENCH, AA-39042; McDONALD BENCH, AA-39043; NUMBER ONE On Joy Gulch, AA-39044; NUMBER 4, No. 4 on Willow Creek, AA-39045; NUMBER 5 on Willow Creek, AA-39046; No. One on Little Willow Creek, AA-39047; NO. 2, TWO, on Little Willow Creek, AA-39048; NOS. 6 and 7 on Cottonwood Creek, AA-39049 and AA-39050; NOS. 3 and 4 on Lucky Gulch, AA-39051 and AA-39052; MERRY BENCH, AA-39053; MERRY BENCH NO. 2, AA-39054; Porcupine Nos. 1 and 2, AA-39055 and AA-39056; Victory Association No One, AA-39057;

for its decision BLM found that the claims' owner had failed to timely file evidence of annual labor or a notice of intention to hold the claims for the calendar year 1984. Appellant contends that BLM's decision is in error because notices of intention to hold the claims were filed with BLM and also argues that BLM should be equitably estopped from voiding the claims due to delays by BLM in processing appellant's patent application for the claims.

In regard to its first argument, appellant states that assessment work was performed for 1984, but could not be timely filed because the general partner was in a remote location in the Aleutian Islands. With its statement of reasons appellant has submitted a copy of an affidavit of assessment work recorded with the Talkeetna Recording District on January 30, 1985. Appellant asserts the document was also filed with BLM about the same time and, recognizing that the filing was not timely, presents copies of three letters it sent BLM during 1984. 2/ It argues that "[a]ny fair reading of any of the three letters * * * conveys notice of the intent of Add-Ventures, Ltd. to continue to hold the claims in question." Statement of Reasons at 4.

---

fn. 1 (continued) victory association no two, AA-39058; lost shovel no one and two, AA-39059 and AA-39060; Alexander no one and two AA-39061 and AA-39062; flora no two, AA-39063; Beaver no one, AA-39064; DAISY NO ONE, AA-39065; Daisey No two, AA-39066; Hidden Treasure No one, AA-39067; HIDDEN TREASURE NO. 2, AA-39068; Flora no one, AA-39069; Moose No. one, AA-39070; Smokey Discovery, AA-39071; Smokey Nos. 1 through 8, AA-39072 through AA-39079; Cottonwood Nos. 8 through 10, AA-39080 through AA-39082; Discovery on Pass Creek, AA-39083; Number 1 on Pass Creek, AA-39084; Nos. 2 through 4 on Pass Creek, AA-39085 through AA-39087; WOOLIE DOG NOs. 3 and 4, AA-39088 and AA-39089; Woolie Dog No. 1, AA-39090; WOOLIE DOG NO. 2, AA-39091; DISCOVERY ON RUBY, AA-39092; Discovery on Gopher Mt., AA-39093; No. 1 Above Discovery, AA-39094; NOS. 1 through 3 on POORMAN CREEK, AA-39095 through AA-39097; Discovery on Ruby Creek, AA-39098; Alder # 2, AA-39099; Cottonwood # 3, AA-39100; Seattle No. 1, AA-39101; SEATTLE # 2, AA-39102; Seattle # 3, AA-39103; Contact # 4, AA-39104; Seattle # 4, AA-390105; Contact claim # 2, AA-39106; Contact No. 5, AA-39107; Contact # 3, AA-39108; Contact no. 1, AA-39109; Cottonwood No. 4, AA-39110; Contact No. 8, AA-39111; Contact No. 7, AA-39112; Peters Creek Nos. 1 and 2, AA-39113 and AA-39114; Peters Creek # 5, AA-39115; Peters Cr. # 6, AA-39116; Upper Peters Creek No. 11, AA-39117; Peters Creek No. 14, AA-39118; Peters Creek # 9 and 10, AA-39119 and AA-39120; Peters Creek No. 15 and 16, AA-39121 and AA-39122; Peters Creek # 17, AA-39123; Peters Creek No 8, AA-39124; Upper Peters Creek Nos. 1 through 5, AA-39125 through AA-39129; UPPER PETERS CR. # 6, AA-39130; Upper Peters Creek Nos. 9 and 10, AA-39131 and AA-39132; Upper Peters Creek No. # 7, AA-39133; Upper Peters Creek No. 8, AA-39134; Peters Creek # 11, AA-39135; Upper Peters Creek No. 12, AA-39136; Upper Peters Creek No. 14, AA-39137; Upper Peters Creek No. 13, AA-39138; Contact # 6, AA-39139; Peters Creek Nos. 3 and 4, AA-39140 and AA-39141; Peters Creek # 12, AA-39142; Peters Creek No. 13, AA-39143. The claims are in T. 28 N., Rs. 8 and 9 W., and T. 29 N. Rs. 8 and 9 W., Seward Meridian, Alaska.

2/ Although the originals of the letters appear in the file for the claims, the affidavit of assessment work for 1984 does not. The absence of the affidavit from the case file does not affect the outcome of the issues on appeal.

Appellant's three letters were sent to BLM in response to requests from the agency for documentation establishing a chain of title showing ownership of the claims. By notice dated June 11, 1984, BLM requested documentation showing an unbroken chain of title from the original locators to the current owner and suspended action on filings related to the claims until the information was submitted. Appellant's attorney responded by letter dated July 10, 1984, enclosing a copy of a 1982 quiet title decree from the Superior Court for the State of Alaska, Third Judicial District at Anchorage. By order dated October 10, 1984, BLM determined that the quiet title decree was not sufficient because it did not show complete chain of title and directed the appellant to show cause why the mining claims should not be deemed null and void. The order stated:

> The Department has consistently held that failure to file the supplemental information is treated by the Department as a curable defect. A claimant who fails to file the supplemental information is notified and given 30 days in which to cure defect [sic]. If the defect is not cured "the filing will be rejected by an appealable decision." Topaz Beryllium Company v. United States, 649 F.2d 775 (10th Cir. 1981).

Accordingly, the order gave appellant 30 days "to provide the documentation verifying the transfer of interest" and stated that "[i]f sufficient evidence is not received," action would be taken "to declare the mining claim null and void in accordance with 43 CFR 3833.4(b)."

By letter dated November 11, 1984, appellant's attorney replied that he was unable to reach the general partner for Add-Ventures, Ltd., who was in the Aleutian Islands, and requested an additional 30 days to respond to the order. He pointed out that it was unclear why further information was being requested, stating: "We are unaware of any law which requires proof of the entire chain of title to the BLM." By letter dated November 20, 1984, the attorney asked that the order to show cause be vacated and the notice requesting information be withdrawn. The reason given for BLM to take these actions was that the information it sought "is not required pursuant to 43 USC 1744 or 43 CFR 3833." He noted that an abstract of title can be required as part of a patent application, but pointed out that BLM had not "requested the information in that context."

[1] Appellant's attorney was correct in asserting that neither 43 U.S.C. § 1744 (1982) nor the regulations at 43 CFR 3833 require a mineral locator to submit proof of chain of title to BLM. Briefly stated, the statute requires the owner of a mining claim to file with BLM a copy of a notice or certificate of location and to annually file either a notice of intention to hold the claim or an affidavit of assessment work, and also provides that failure to file these documents shall be conclusively deemed to constitute an abandonment of the claim. The regulations at 43 CFR subpart 3833 were promulgated to establish procedures for filing the documents required by the statute. 43 CFR 3833.0-1. Among other matters, they specify in detail the information to be provided BLM when filing location certificates, 43 CFR 3833.1-2(b), evidence of assessment work, 43 CFR 3833.2-2, and notices of intention to hold, 43 CFR 3833.2-3(b). None requires a locator to provide evidence of chain of title. Nor is such documentation needed. The regulations do not replace

state recording requirements and do not make BLM the official repository of documents of title to unpatented mining claims. 43 CFR 3833.0-1(d). While the validity of a mining claim depends upon compliance with both state and Federal laws, whether a miner possesses title to a claim he files with BLM is a matter governed by state law. The fact a mining claim has been filed with BLM does not give the claimant rights he does not otherwise possess nor render the claim valid if it is not otherwise valid under the mining laws. 43 CFR 3833.5.

Because neither the statute nor regulations require a mineral locator to submit evidence of title other than a location notice, BLM did not have authority to require appellant to submit documentation establishing a chain of title. Consequently, BLM could not have declared appellant's claims void either on the basis of the documents of title supplied or for failure to supply them. The regulation cited by BLM in its order to show cause as the proposed basis for declaring the claims null and void, 43 CFR 3833.4(b), does provide that failure to file information after notice from BLM as to a deficiency may lead to a determination that a claim is void, but its application is explicitly limited to the information requirements of 43 CFR 3833.1-2(b), 3833.2-1(c), 3822.2-2(a) and (b), and 3833.2-3(b) and (c).

The subsection was added subsequent of the decision in Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981). See 47 FR 19298 (May 4, 1982) (proposed rules); 47 FR 56300, 56303 (Dec. 15, 1982) (final rules). The suit challenged a number of the regulations promulgated by the Department in 43 CFR subpart 3833. See Topaz Beryllium Co. v. United States, 479 F. Supp. 309, 311 (C.D.D. Utah, 1979). The district court found the regulations to be reasonable and within the delegated authority of the Secretary of the Interior. Id. at 315. The Tenth Circuit affirmed. Both courts, however, noted that subsection 1744(c) applies only to failure to file the documents required by the statute, and the Tenth Circuit approved the Department's procedure of treating failure to file supplemental information required by regulation as a curable defect. Topaz Beryllium Co. v. United States, 649 F.2d at 778. Thus, while BLM correctly described the law in its order to show cause, the law it described does not apply in regard to the information BLM sought. The regulatory procedure for dealing with curable defects which allows a claim to be declared invalid for failure to file requested information applies only when the information sought by BLM is required by regulation. It does not apply to other information BLM believes might be useful to its administration of mining claim records. When BLM wishes to obtain such additional information, it should simply request that the mining claim owner provide it. 3/

3/ The matter is quite different when an application for patent has been filed. A patent applicant is required by regulation to supply either a certificate or abstract of title, 43 CFR 3862.1-3. Alternatively, he may establish possessory title under 30 U.S.C. § 38 (1982). See BLM Manual § 3862.3. Whatever method is used, an applicant must satisfy BLM that he owns full possessory title to any claim for which he seeks patent.

[2] Although the information called for by BLM was not required by the regulations, neither the notice nor order qualify appellant's letters as notices of intention to hold its claims. We do not disagree with the appellant that the letters could support an inference that it intended to hold the claims; however, under the controlling statute and regulation the question is not whether appellant supplied a document which indicated that it intended to hold its claims, but whether it filed a notice of intent.

As an alternative to filing a affidavit of assessment work, subsection 1744(a) permits a locator to file a notice of intent. Appellant correctly states the statute does not prescribe the form a notice must take, but this does not mean that any document sent to BLM from which intent might be inferred is sufficient. See Paul S. Coupey, 35 IBLA 112, 115 (1978). Rather, whatever the form of the instrument, it must be filed with BLM as a notice of intent. 43 U.S.C. § 1744(a)(2) (1982); 43 CFR 3833.2-3(a). It must indicate that the claim owner continues to have an interest in the claim. 43 CFR 3833.0-5(1). It must also be a copy of the document which was or will be recorded in the local office where the claim's location notice has been recorded. 43 U.S.C. § 1744(a)(1); 43 CFR 3833.2-3; Ronald Willden, 60 IBLA 173 (1981); Ted Dilday, 56 IBLA 337, 88 I.D. 682 (1981). The instrument must also include "a description of the location of the mining claim sufficient to locate the claimed lands on the ground," 43 U.S.C. § 1744(a)(2) (1982), the BLM assigned claim number, 43 CFR 3833.2-3(b)(1)(i), or the name of the claim, Arley Taylor, 90 IBLA 313, 314 (1986); Philip Brandl, 54 IBLA 343, 344 (1981). While the letters from appellant's attorney identify the claims by their assigned claim numbers, nothing in the case file shows them to have been recorded with the Talkeetna Recording District, nor do the letters themselves indicate that they were sent to BLM to be filed as notices of intent. Thus, we conclude that appellant's letters to BLM do not meet the requirements of the statute and regulation. Ronald Willden, supra; John Murphy, 58 IBLA 75, 82 (1981). 4/

Appellant's second argument is that BLM should be estopped from voiding the claims due to its delays in processing patent applications for them. This argument is puzzling because there is no indication in the case files that appellant has in fact filed one or more patent applications for the claims. In addition to the file for the mining claims, BLM has forwarded the files for mineral surveys (M.S.) 2384, 2451, and 2452. The file for M.S. 2384 shows that the survey of 115 claims was approved March 16, 1984, and copies of the approved plats and field notes were sent to appellant under cover letter dated May 29, 1984. The files for M.S. 2451 and 2452 appear to be incomplete, but do show that M.S. 2451 was approved on August 10, 1982 and that M.S. 2452 has been ordered but not yet performed. Mining claims and mill sites not conforming to the subdivisions of the public lands survey must be surveyed and the survey posted on the claim or site before an application

4/ Appellant suggests that under 43 U.S.C. § 1744(c) (1982) a defective instrument is sufficient. The plain language of the provision, however, reveals that it concerns defective instruments "filed for record under other Federal laws permitting filing or recording" such as the Mining in the Parks Act, 16 U.S.C. §§ 1901-1912 (1982), and not section 1744 itself. John Murphy, 58 IBLA 75, 82 (1981).

for patent may be filed. See 30 U.S.C. § 29 (1982); 43 CFR 3861.1, 3861.7, 3863.1, 3864.1. Consequently, an allegation as to delay in processing appellant's patent application could be made, at best, only in regard to the claim surveyed by M.S. 2451, if indeed a patent application was filed.

[3] We need not determine whether a patent application was filed or the reasons it may still be pending in order to consider appellant's argument concerning estoppel. Appellant bases its argument on the statements appearing in United States v. Locke, 471 U.S. 84 (1985), which once again acknowledge that estoppel may apply against the government. In numerous decisions this Board has discussed in detail the judicial standards it has adopted and follows in determining whether in a given case the government is to be estopped. See, e.g., Ptarmigan Co., Inc., 91 IBLA 113 (1986), and cases cited therein. None of these standards have been addressed by the appellant. An appellant who does not with some particularity show adequate reason for appeal and, as appropriate, support the allegation with arguments or evidence showing error cannot be afforded favorable consideration. United States v. Connor, 72 IBLA 254 (1983), Rocky Mountain Natural Gas Co., 55 IBLA 3 (1981). Conclusory allegations of error, standing alone, do not suffice. United States v. Fletcher DeFisher, 92 IBLA 226 (1986). Accordingly appellant's estoppel argument is rejected because it presents no basis upon which to conclude that in this case estoppel ought to be applied against BLM.

Although we find that BLM properly deemed appellant's claim abandoned under 43 U.S.C. § 1744 and 43 CFR 3833, we must modify BLM's declaration that the recordations of the claims are void, and its rejection of appellant's mineral survey applications. The former cannot be sustained because it does not have any legal effect. It is apparent from the case file that appellant's claims were properly filed with BLM in 1977 as required by 43 U.S.C. § 1744(b) (1982). That the claims are now null and void does not change this fact, nor can it be changed by a BLM decision. We recognize that BLM's intent may have been to indicate that its records would be changed to show the claims are now void and that no mining claims exist for the land, but if this was its purpose, the statement concerning recordation was unnecessary. The mining claims are void due to appellant's failure to file during 1984 either evidence of assessment work or a notice of intention to hold as required by the statute, and this fact is sufficient for BLM to make appropriate changes in its records.

BLM's rejection of appellant's mineral survey applications for M.S. 2384 and M.S. 2451 was inappropriate because no application for survey was pending at the time. Rather the surveys had been completed and approved. Upon approval, a mineral survey becomes part of the public land survey. Thus, if any action were appropriate, it would be cancellation of the mineral survey itself. See Walter Bartol, 19 IBLA 82 (1975); but see Shank v. Holmes, 137 P. 871, 874-75 (Ariz. 1914). In contrast, assuming the case file is correct, rejection of the application for M.S. 2452 was appropriate because the survey had been ordered but not made.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Franklin D. Arness
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge